

NOTICE TO PROVIDERS OF PROFESSIONAL SERVICES
FOR
AUDIT OF GEMS AND HGIA ACCOUNTS
Solicitation No. SID-PS-02-15-01

The Department of Business, Economic Development, and Tourism (DBEDT) seeks to engage professional services for the auditing of DBEDT Green Energy Market Securitization ("GEMS") and Hawaii Green Infrastructure Authority ("HGIA") accounts. Professional services are requested in accordance with Accounting Series, GS-510 under *Classification and Qualifications – General Schedule Qualification Standards* contained in the U.S. Office of Personnel Management's (OPM) Policy Handbook (<http://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-standards/0500/accounting-series-0510>).

DBEDT requires professional services for auditing of the annual financial statements of the GEMS bond accounts and HGIA accounts for the fiscal years ending June 30, 2015 ("FY 2015"), June 30, 2016 ("FY 2016"), and June 30, 2017 ("FY 2017"). Auditing services are requested to:

- Provide an independent audit report on the GEMS and HGIA Financial Statements conducted in accordance with generally accepted government auditing standards, and
- Produce a written report on internal controls and compliance of GEMS and the HGIA.

Under the requirements of Section 103D-304, Hawaii Revised Statutes ("HRS"), the Director of DBEDT is authorized to invite interested individuals or firms engaged in providing professional services to submit statements of qualification and expressions of interest for inclusion on a list of Providers to be considered for this project. The project under this professional services contract(s) is funded, in whole or in part, with moneys from the Hawaii Green Infrastructure Bond Fund and Hawaii Green Infrastructure Special Fund.

MINIMUM QUALIFICATIONS:

Providers must meet various minimum qualifications including, but not limited to the following:

1. Proof they are a licensed certified public accountant or accounting firm with the ability to practice in the State of Hawaii, as certified by the Department of Commerce and Consumer Affairs (i.e.; copy of General Excise license and Permit to Practice to be provided as part of Appendix);
2. Documentation of proven experience in auditing and accounting of public agencies and private industries;
3. Demonstrated proficiency with government accounting standards;
4. Proof of certified public accountants ("CPAs") on staff;

5. Three (3) client references, who may be contacted, including at least two for whom services were rendered during the preceding 12-month period; and
6. Participation in an external practice-monitoring program. Provider to provide copy of most recent System Review Report (indicating peer review rating of “pass” within the past three (3) years and most recent Public Company Accounting Oversight Board (PCAOB) Report (if applicable).

Full details of this solicitation are described under the Submittal Requirements pages, as well as accessed on the State Procurement Office website via the following URL:

<http://spo3.hawaii.gov/notices/notices>

Due Date after: (Leave blank)>Island: Statewide>Select an Agency (dropdown box): Department of Business, Economic Development and Tourism>Category (dropdown box): Professional Services> click on “Search” button> then go to the named solicitation and on right-side of the title, click on More Info>View solicitation details.

The publish date for this document is February 18, 2015.

SUBMITTAL REQUIREMENTS

Sealed submittal packets from individuals or firms who wish to be considered in the selection for this project, along with the information requested in items 2 through 10 below, must be received by **Thursday, March 5, 2015, 4:30 P.M. (HST)** at:

Department of Business, Economic Development, and Tourism
Strategic Industries Division
Attention: Susan Gray-Ellis
235 S. Beretania Street, Room #502
Honolulu, Hawaii 96813

NOTE: Fax or electronic transmittals will not be accepted as offers.

NUMBER OF COPIES. One original plus four (4) copies and one (1) CD containing a PDF file of the Provider’s information should be submitted of all requested documents below. All pages of the submittal should be numbered consecutively.

1. INTENT TO APPLY – Send a separate email to sgray-ellis@dbedt.hawaii.gov with your intent to apply for this solicitation. Your contact information should include the name of the contact person, phone number, mailing address and email address for notification of any addenda or additional advertisements in the future, if necessary. If you do not send us an Intent to Apply by February 25, 2015, you will be responsible for obtaining any addenda through the State Procurement Office website.

2. EXPRESSION OF INTEREST – Submit a signed letter stating an expression of interest in this project (original + 4 copies + 1 CD with PDF file).
3. CIP DPW FORM 120 – Submit the completed CIP DPW Form 120 (Revised 6/99) (original + 4 copies + 1 CD with PDF file).

NOTE: The CIP DPW Form may be downloaded from www.hawaii.gov/forms. Click on the “Public Forms” tab on the top of the screen, then in the search box on the right, type CIP DPW-120, hit Search. Then, download the fillable “CIP DPW-120 Questionnaire for Architects, Engineers & Other Professional Services” form.

4. STATEMENT OF QUALIFICATIONS – Submit a statement of qualifications (SOQ) for the discipline listed in the first paragraph of the notice to professionals, highlighting the Provider’s qualifications, expertise, experience and past performance, how minimum qualifications are met including samples of past work (original + 4 copies + 1 CD with PDF file). The SOQ may not exceed 15 pages.

The SOQ shall not include resumes of key personnel who will be assigned to this project or copies of the licenses or certificates of personnel in the discipline. These will be included in the Appendix (see #9, below).

5. PROOF OF INSURANCE COVERAGE – Present proof of insurance coverage via a Certificate of Insurance (original + 4 copies + 1 CD with PDF file). The Provider shall maintain the policy in full force and effect, at all times during the term of the contract, with the following insurance liability coverages:
 - a. General liability for limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The State of Hawaii should be added as an additional insured with the following language in the Description of Operations section of the form: "The State of Hawaii including all of its departments and attached agencies, their officers, employees and agents are named as additional insured, as respects the named insured's activities on their behalf."
 - b. Automobile liability insurance for limit of not less than \$1,000,000 per accident, \$1,000,000 per person and \$1,000,000 per property damage.
 - c. Professional Liability insurance for limit of not less than \$1,000,000 per occurrence \$2,000,000 in the aggregate.

NOTE: Provider(s) should agree by entering into a contract or Agreement with the State to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Provider(s) to enter into a pre-loss agreement to waive subrogation without an endorsement, the Provider(s) should agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.

If a Provider is not able to provide the above insurance certificates at the time of submittal, a letter from an insurance company, stating they will insure the firm, if selected, for the insurance policies and the amount of minimum coverage required above, will be accepted as proof of insurance.

6. CONFLICT OF INTEREST – Submit a statement indicating any conflicts of interest in performing services for DBEDT and/or the State of Hawaii. Statement should indicate “none,” if appropriate. List membership on State boards, commissions, etc. (original + 4 copies + 1 CD with PDF file). For additional information, please refer to the State Ethics Code, Chapter 84, HRS, or go to the Hawaii State Ethics Commission Web site at: <http://hawaii.gov/ethics/>.
7. QUALIFICATIONS QUESTIONNAIRE – Submit a completed *Qualifications Questionnaire*, provided herein (Exhibit 1A) (original + 4 copies + 1 CD with PDF file).
8. PROVIDER REFERENCES – Submit the names and phone numbers of up to three clients who may be contacted, including at least two for whom services were rendered during the preceding 12-month period. Complete Exhibit 2A, Contractor References Form (original + 4 copies + 1 CD with PDF file). Complete Subcontractor References Form, if applicable.

NOTE:

- I. All references will be verified and scored.
 - II. References will be called during normal business hours of the location of the business.
 - III. Three (3) attempts will be made to contact references including requests for responses.
 - IV. For each non-responsive or negative response, there will be a one (1) point deduction.
9. APPENDIX – Include COPIES OF Provider’s General Excise Tax (GET) license, Provider’s Permit to Practice, and resumes of key personnel who were assigned to past projects of similar scope and copies of the licenses or certificates of personnel in the discipline. Limit Appendix to 15 pages (original + 4 copies + 1 CD with PDF file).
 10. JUDGMENTS and ONGOING LITIGATION – Submit a statement indicating any judgments issued against the firm and any ongoing litigation involving the firm that is public record. Statement should indicate “none,” if appropriate (original + 4 copies + 1 CD with PDF file).

EVALUATION

A review/selection committee will evaluate SOQs received by the deadline to determine whether the Provider(s) is/are qualified to provide the necessary services. A list of Qualified Providers will be created. Qualified Providers will then be evaluated by the committee using the criteria attached as Exhibit 3A. The highest-scoring Qualified Provider will be contacted to negotiate one or more contracts for the required project.

Selection of Qualified Provider(s) will be made in accordance with Section 103D-304, HRS and Section 3-122, Subchapter 7, Hawaii Administrative Rules (“HAR”), as amended. The selection criteria employed in descending order of importance shall be:

1. Experience and professional qualifications relevant to the project type.
2. Past performance on projects of similar scope for public agencies or private industry.
3. Capacity to accomplish the work in the required time.
4. Any other criteria as determined by the review/selection committee to be relevant to the purchasing agency’s needs or necessary and appropriate, including, but not limited to: reviewing roles and responsibilities key team members performed for similar past projects; minimum qualifications; licenses and certifications of key team members; lack of conflicts of interest and judgments against the firm; and list of subcontractors, if any.

See attached evaluation criteria sheet (Exhibit 3A) for scoring details.

GENERAL INFORMATION

1. HAWAII COMPLIANCE EXPRESS – As a condition of award of a contract for professional services over \$2,500, the selected Qualified Provider is required to register and submit a Certificate of Vendor Compliance obtained through the Hawaii Compliance Express. The Hawaii Compliance Express (“HCE”) allows businesses to register online through a simple interface at <http://vendors.ehawaii.gov/hce/splash/welcome.html>. The HCE provides you with a ***“Certificate of Vendor Compliance”*** with your current compliance status as of the issuance date. The certificate is acceptable for both contracting purposes and final payment. To use the HCE services, you must pay an annual subscription fee of \$12.00 to the Hawaii Information Consortium, LLC (HIC). This fee may be renewed annually.
 - a. HRS Chapters 383 (Employment Security), 386 (Workers’ Compensation) 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award:
 - i. Pursuant to Section 103D-310(c), HRS, successful Qualified Providers shall be required to submit an approved certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the

date of issue and must be valid on the date it is received by the purchasing agency. The certificate of vendor compliance shall be submitted on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR*, Form LIR#27 which is required through the HCE.

- b. **NOTE:** The process to obtain the compliance documents may take three to four weeks. If the selected Provider does not already have the necessary compliance certificate, it may be too late to begin this process at the time of award. Therefore, although not a prerequisite to apply for this solicitation, it is strongly suggested that all Providers immediately apply to obtain the Certificate of Vendor Compliance certificate, if necessary. Non-compliance may be grounds to move on to the next responsible, responsive Qualified Provider.
2. **LATE SUBMITTALS** – Submittals received after the above due date and time will be considered “late” and will be ineligible for this solicitation. Providers are cautioned to make prior arrangements to ensure delivery by the due date and time as no late submittal will be accepted.
3. **INCOMPLETE SUBMITTALS** – Submittals received by the due date, but with missing information or minor deficiencies, will be considered “incomplete.” Providers will be notified of the deficiencies and will have three (3) working days from the notification date to submit all the required items or their submittal will be considered late and disqualified for consideration.
4. **CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS** – Providers are hereby notified of the applicability of Section 11-355, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. For more information, contact the Campaign Spending Commission at (808)586-0285 or go to their website at <http://www.hawaii.gov/campaign>.
5. **SELECTION OF PROVIDERS** – The selection of Qualified Providers will be made in accordance with Section 103D-304, HRS; and Section 3-122, Subchapter 7, HAR, as amended.
6. **RIGHT TO CANCEL** – The State reserves the right to cancel this solicitation, in whole or part, when it is determined to be in the best interest of the State, pursuant to HRS Section 103D-308, HRS; and Sections 3-122-96 through 3-122-97, HAR.
7. **AVAILABILITY OF FUNDS** – The State anticipates funding availability through June 30, 2015, subject to appropriation and availability of funds.

8. **CONFIDENTIALITY** – If a person believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the head of the purchasing agency or designee who is named at the end of this solicitation should be so advised in writing and provided with justification to support the confidentiality claim. Price is not considered confidential and will not be withheld.

A person shall request in writing nondisclosure of designated trade secrets or other proprietary data considered confidential. Such data shall accompany the submittal, be clearly marked, and shall be readily separable from the submittal in order to facilitate eventual public inspection of the non-confidential portion of the submittal.

Pursuant to HAR Section 3-122-58, HAR, the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination in accordance with HRS Chapter 92F, HRS. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with Section 92F-15.5(a), HRS.

9. **PUBLIC INSPECTION** – The contents of any submission shall not be disclosed during the review, evaluation, discussion, or negotiation process. Once the award notice is posted, all submissions become available for public inspection. Those sections that the person and the State previously agreed are confidential shall be excluded from access. Therefore, all confidential and/or proprietary information must be identified by the Provider upon submission.
10. **CONTACT US** – Any questions regarding this solicitation must be submitted in writing (email is acceptable) to DBEDT/SID Contracts Office, Attn. Susan Gray-Ellis, 235 S. Beretania St., Room 502, Honolulu, HI 96813; email: sgray-ellis@dbedt.hawaii.gov.
11. **QUESTIONS PRIOR TO SUBMISSION** – All questions must be submitted in writing (email is acceptable) prior to the date listed below to DBEDT/SID Contracts Office, Attn. Susan Gray-Ellis, 235 S. Beretania St., Room 502, Honolulu, HI 96813; email: sgray-ellis@dbedt.hawaii.gov. The State will respond to written questions via addenda to all Qualified Providers who have submitted an Intent to Apply, as well as post responses on the Hawaii State Procurement Office website. If no intent to apply has been received by the State, it will be the Qualified Provider's responsibility to ensure that all addenda have been reviewed through the Hawaii State Procurement Office website prior to submission.

The deadline for written questions for this solicitation will be Wednesday, February 25, 2015, no later than 12:00 noon (Hawaii Standard Time).

12. **NO MEETINGS WITH PROVIDERS** – Providers who have responded to this notice will not be granted meetings with any members of the Hawaii State Energy Office during the

active procurement process unless at the request of the Review/Selection Committee in connection with this solicitation.

13. DEBRIEFING/PROTEST – Pursuant to Section 3-122-70, HAR, a debriefing is provided, if requested, to the non-selected Providers to inform them of the basis for the source selection decision and contract award.
 - a. A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. The Procurement Officer or designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of the written request.
 - b. A protest by the Provider submitted pursuant to Section 103D-701 HRS following a debriefing shall be filed in writing with the Chief Procurement Officer or designee within five (5) working days after the date that the debriefing is completed, as specified in Section 103D-304 (k) HRS.

Any protest pursuant to Section 103D-701 HRS, and Section 3-122-70 HAR, shall be submitted in writing to the following:

Mr. Luis P. Salaveria
Director, DBEDT
250 S. Hotel Street, 5th Floor
Honolulu, HI 96813

Letters should be mailed registered or certified with return receipt requested. If you prefer, you may personally serve your letter to the Director's office or to the SID Contracts Office: 235 S. Beretania St., 5th Floor, Room 502, Honolulu, HI 96813, Attn. Susan Gray-Ellis, Tel. 808-587-9002; email: sgray-ellis@dbedt.hawaii.gov. All letters must be received within the deadline specified above.

Luis P. Salaveria
Director, DBEDT and
Chair, HGIA

Department of Business, Economic Development, and Tourism

(Internet Posting: February 18, 2015)

EXHIBITS

- 1A. Qualifications Questionnaire
- 2A. Contractor and Subcontractor References
- 3A. Evaluation Criteria
- 4A. General Conditions

APPENDIX

Include copy of Provider's GET license, Provider's Permit to Practice, and resumes of key personnel who were assigned to projects of similar scope and copies of the licenses or certificates of personnel in the discipline.

EXHIBIT 1A QUALIFICATIONS QUESTIONNAIRE

1. How many years has your organization been in business under your present business name?
2. How many years' experience in this field of work has your organization had?
3. Show what projects your organization has completed in the past five (5) years that are related to this project, including at least two (2) projects during the preceding year. Please include project date, name of contracting entity & contact, project description, length of contract period and contract amount (if possible). Also state for which projects your organization was the prime contractor.
4. Have you ever failed to complete any work awarded to you? If so, please provide a brief description, including when and where it took place and why work was not completed.
5. For what entities within the State of Hawaii, other than government agencies, have you performed work? Please include project date, name of contracting entity & contact, project description, length of contract period and contract amount (if possible). Also state for which projects your organization was the prime contractor.


6. For what State departments and county agencies in Hawaii have you performed work? Please include project date, name of contracting entity & contact, project description, length of contract period and contract amount (if possible). Also state for which projects your organization was the prime contractor.

7. Have you performed work for the U.S. Government? If so, please include project date, name of contracting entity & contact, project description, length of contract period and contract amount (if possible). Also state for which projects your organization was the prime contractor.

8. Have you ever performed any work for any other governmental agencies outside of Hawaii? If so, please include project date, name of contracting entity & contact, project description, length of contract period and contract amount (if possible). Also state for which projects your organization was the prime contractor.

9. Does your organization have any judgments and/or pending lawsuits? If so, please provide non-confidential information regarding the legal action. Statement should indicate "none," if appropriate.

10. What is the professional or project experience of the principal individuals who were assigned to projects of similar scope?

	<h2>CONTRACTOR REFERENCES</h2> <p>To be completed by Provider. At least two (2) references for whom services were rendered during the preceding calendar year.</p>													
	<h2>PROVIDER INFORMATION</h2> <table border="1"><tr><td>1. Name of Provider</td><td>2. Solicitation Reference Number</td></tr></table>		1. Name of Provider	2. Solicitation Reference Number										
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<h2>CLIENT #1 INFORMATION</h2> <table border="1"><tr><td>3. Organization Name</td><td colspan="2">4. Organization Address</td></tr><tr><td>5. Project Name</td><td colspan="2">6. Project Dates Start: _____ End: _____</td></tr><tr><td colspan="3">7. Contact Name/Title _____ Email: _____ Phone _____</td></tr><tr><td colspan="3">8. Scope of Services</td></tr></table>			3. Organization Name	4. Organization Address		5. Project Name	6. Project Dates Start: _____ End: _____		7. Contact Name/Title _____ Email: _____ Phone _____			8. Scope of Services		
3. Organization Name	4. Organization Address													
5. Project Name	6. Project Dates Start: _____ End: _____													
7. Contact Name/Title _____ Email: _____ Phone _____														
8. Scope of Services														

CLIENT #2 INFORMATION

3. Organization Name	4. Organization Address
5. Project Name	6. Project Dates Start: End:
7. Contact Name/Title	Email: Phone
8. Scope of Services	

CLIENT #3 INFORMATION

3. Organization Name	4. Organization Address
5. Project Name	6. Project Dates Start: End:
7. Contact Name/Title	Email: Phone
8. Scope of Services	

11. Additional Comments



SUBCONTRACTOR REFERENCES (If applicable)

To be completed by Provider.

PROVIDER INFORMATION

1. Name of Provider	2. Solicitation Reference Number
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SUBCONTRACTOR #1 INFORMATION

3. Organization Name	4. Organization Address
----------------------	-------------------------

5. Project Name	6. Project Dates
-----------------	------------------

Start:	End:
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7. Contact

Name/Title	Email:	Phone
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8. Scope of Services to be Rendered:

SUBCONTRACTOR #2 INFORMATION

3. Organization Name	4. Organization Address
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5. Project Name	6. Project Dates
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Start:	End:
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7. Contact

Name/Title	Email:	Phone	.	.
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8. Scope of Services to be Rendered.

EXHIBIT 3A

EVALUATION CRITERIA FOR SELECTION COMMITTEE

Professional Services Notice _____

Provider Name: _____

The total number of points used to score this proposal is 100.

Discussion: The discussion space next to each criterion is provided for you to elaborate on any problems or instances of superior performance and should also be used to record reasons why a full score was not given for the criterion.

	Criteria	Total Possible Points	Break-down	Score	Discussion
1	Experience and professional qualifications relevant to: (1) auditing state government bond and financial accounts	40			
	(a) Previous experience, capability and proficiency providing auditing services to federal, state, and/or local governments		25		
	(b) Knowledgeable of and evaluating financial account and bond financing internal controls and compliance		15		
2	Past performance on audits of similar scope for public agencies or private industry	30			
	(a) List and description of services provided in past 5 years related to this submittal, including at least 2 jobs in the preceding year		18		
	(b) Examples of auditing performance for federal, state, and/or local governments		6		
	(c) Three (3) positive references from current clients		6		
3	Capacity to accomplish work in required time	20			
	(a) Demonstrated ability to meet audit objectives within allotted time		12		
	(b) List all audits or work that were delayed or late by persons assigned to the project team in the last 5 years		8		

4	Other criteria	10			
	(a) Personnel who hold appropriate credentials, certifications, and have completed relevant training to do the work		4		
	(b) Resumes or Curriculum vitae for key personnel in the firm		3		
	(c) No conflicts of interest, as evidenced by a statement indicating conflicts of interest in performing services for DBEDT and/or the State of Hawaii		3		
	TOTAL POSSIBLE POINTS:	100			

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
 - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
- e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
- f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
- g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
- h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
- i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.

20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.



STATE OF HAWAII

SPECIAL CONDITIONS

A. REPORTING REQUIREMENT FOR HAWAII GREEN INFRASTRUCTURE SPECIAL FUND

The funding for this contract shall come from Act 211, Session Laws of Hawaii 2013 through the sale of GEMS bonds. As provided under Act 211, the following conditions must be fulfilled and will be due to the STATE as specified in Task 5 Key Deliverables table:

1. The Department of Business, Economic Development, and Tourism, with the assistance of the Hawaii Green Infrastructure Authority shall submit a report to the legislature, no later than twenty days prior to the convening of each regular session, on the status and progress of the GEMS Program. The report shall include the status of the Hawaii Green Infrastructure Authority's activities, including: Approved loan program description and uses; summary information and analytical data concerning implementation of the loan program; summary information and analytical data concerning the deployment of clean energy technology, demand response technology, and energy use reduction and demand-side management infrastructure, programs, and services; and repayments made or credits provided to electric utility customers.
2. The Hawaii Green Infrastructure Authority shall conduct a study in the 2015 calendar year to determine the extent to which the Hawaii Green Infrastructure Authority's activities have benefitted the State by advancing the State's renewable energy goals and reducing energy costs for consumers by providing affordable alternative energy options; and whether the loan program shall be extended, eliminated, or otherwise modified beginning July 1, 2016. The Hawaii Green Infrastructure Authority shall submit a report of its findings to the legislature, no later than twenty days prior to the convening of the regular session of 2016.
3. The Hawaii Green Infrastructure Authority shall submit to the Public Utilities Commission an annual plan for review and approval no later than ninety days prior to the start of each fiscal year. The annual plan submitted by the Authority shall include the Authority's projected operational budget for the succeeding fiscal year.
4. The GEMS Program shall be audited at least annually by a firm of independent certified public accountants selected by the authority, and provide the results of this audit to the Department and the Public Utilities Commission.

Furthermore, Contractor and Subcontractors who enter into any contract for the performance of any task within the Work Plan of this contract shall be subject to these reporting requirements, and the Contractor shall be responsible for ensuring the timeliness and accuracy of this reporting.

B. CONTRACT EXECUTION IN COUNTERPARTS

This Contract may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument. This Contract may be executed and delivered by any party via facsimile transmission or other electronic transmission (e.g. email).